

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the SIRS Appeal of  
Ace Care, Inc.

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

Assistant Chief Administrative Law Judge Bruce H. Johnson conducted a prehearing conference in this contested case proceeding beginning at 10:00 a.m. on Friday, June 26, 1998, at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota.

Robert V. Sauer, Assistant Attorney General, Suite 900 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2127, represented the Department of Human Services. No one represented Ace Care, Inc., and it did not appear at the prehearing conference. The record closed on August 17, 1998, when the response of Ace Care, Inc. to the Department's motion for default was due.

**NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Human Services will make the final decision after reviewing the hearing record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minnesota Law,<sup>[1]</sup> the Commissioner may not make his final decision until after the parties have had access to this Report for at least ten days. During that time, the Commissioner must give each party adversely affected by this Report an opportunity to file objections to the report and to present argument. Parties should contact the office of David S. Doth, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155-3842, to find out how to file objections or present argument.

## **STATEMENT OF THE ISSUE**

Whether the Department should recover the sum of \$56,401.98 from Ace Care because of its failure to provide the Department with documentation required by law to support the need for certain personal care services that Ace Care allegedly provided to a patient from January 1, 1994, through December 31, 1996.

Based upon the record in this matter, the Administrative Law Judge makes the following:

## **FINDINGS OF FACT**

1. On May 6, 1998, the Department's attorney began this contested case proceeding by serving Ace Care with the Notice of and Order for Hearing and Prehearing Conference (Notice of Hearing) by certified U. S. Mail directed to the address that Ace Care had most recently provided to the Department. That address was: care of David Simmons, 8232 Edgewood Avenue North, Brooklyn Park, Minnesota 55445-2524.

2. The Notice of Hearing scheduled a prehearing conference in this contested case proceeding beginning at 2:00 p.m. on Thursday, June 4, 1998.<sup>[2]</sup>

3. The Notice of Hearing contained the following statements:

Pursuant to Minn. R. 1400.5700 (1997), all persons intending to appear at the hearing must file a completed Notice of Appearance (form enclosed) with the administrative law judge, and serve a copy of said Notice on the Department's representative in this proceeding, within twenty (20) days of the date of service of this Notice of and Order for Hearing.

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Pursuant to Minn. R. 1400.6000, failure of the parties to appear at the hearing in the above-captioned matter may result in the allegations contained herein to be taken as true. This means that the agency's action will be upheld.

4. Before the Department began this contested case, Susan Broin, Attorney at Law, Suite 1506 Pioneer Building, 336 North Robert Street, was representing Ace Care, but after being served with the Notice of Hearing, she advised the Department's counsel that she would no longer be representing Ace Care.<sup>[3]</sup>

5. On June 1, 1998, Fred Adiya, Attorney at Law, notified the Department's counsel that he would be representing Ace Care in this contested case proceeding. On the same day, the Department's counsel, acting on behalf of both parties, requested the Administrative Law Judge to continue the hearing to June 26, 1998, to allow the parties

sufficient time to discuss the possibility of settlement.<sup>[4]</sup> The Administrative Law Judge granted the continuance.

6. Although Mr. Adiya indicated that he would be filing his Notice of Appearance on behalf of Ace Care, no one has ever filed a Notice of Appearance on Ace Care's behalf, as the Notice of Hearing instructed be done.

7. On June 25, 1998, the day before the rescheduled prehearing conference, Mr. Adiya informed the Department's counsel that he would no longer be representing Ace Care in this contested case proceeding and that he had sent a letter to Mr. Simmons of Ace Care to make certain that Mr. Simmons was aware of the rescheduled prehearing conference.

8. No one appeared on behalf of Ace Care at the June 26, 1998, prehearing conference, nor did anyone acting on Ace Care's behalf request the Administrative Law Judge to allow Ace Care to be excused from appearing at that conference or to have the conference rescheduled for a later date.

9. Because of Ace Care's violations of this Office's rules, particularly because it failed to appear at the prehearing conference, the facts alleged in the Notice of Hearing are taken as true, and the Administrative Law Judge incorporates those facts into these Findings by reference.

10. The Administrative Law Judge adopts as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

## **CONCLUSIONS**

1. Minnesota law<sup>[5]</sup> gives the Administrative Law Judge and the Commissioner of Human Services authority to conduct this proceeding, to consider the issues raised here, and to make findings, conclusions, and orders.

2. The Department has complied with all of Minnesota law's substantive and procedural requirements.

3. The Department gave Ace Care proper and timely notice of the rescheduled prehearing conference in this proceeding.

4. Under the Office of Administrative Hearings' rules,<sup>[6]</sup> Ace Care is in default because it failed to appear at the rescheduled prehearing conference without being excused by the Administrative Law Judge.

5. Under those rules, when a party defaults, an administrative law judge may take the facts alleged in the Notice of Hearing as true and no longer in dispute.

6. Based upon the facts alleged in the Notice of and Order for Prehearing Conference and Hearing, which the Administrative Law Judge has taken as true, Ace Care has received \$56,401.98 in medical assistance payments for personal care services that were not by a physician. Ace Care is therefore not eligible to receive medical assistance payments for those services, and the law therefore allows the Department to recover the sum of \$56,401.98 from Ace Care.<sup>[7]</sup>

7. The Administrative Law Judge adopts as Conclusions any Findings which are more appropriately described as Conclusions.

Based upon these Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

The Administrative Law Judge recommends that the Commissioner enter an Order upholding the Department's proposed recovery of \$56,401.98 from Ace Care, Inc.

Dated this 19th day of August 1998.

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BRUCE H. JOHNSON  
Assistant Chief Administrative Law Judge

### **NOTICE**

Under Minnesota law,<sup>[8]</sup> the Commissioner must serve his final decision upon each party and the Administrative Law Judge by first-class mail.

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<sup>[1]</sup> Minn. Stat. § 14.61 (1996). (Unless otherwise specified, all references to Minnesota Statutes are to the 1996 edition.)

<sup>[2]</sup> Affidavit of Service of Barbara Bittner.

<sup>[3]</sup> Affidavit of Robert V. Sauer.

<sup>[4]</sup> Affidavit of Robert V. Sauer.

<sup>[5]</sup> Minnesota Statutes, section 14.50, section 256B.04, and section 256B.064. Minnesota Rules, parts 9505.0195, subpart 6, part 9505.0465, and parts 9505.2160 through .2245 (1997). (Unless otherwise specified, all references to Minnesota Rules are to the 1997 edition.)

<sup>[6]</sup> Minnesota Rules, part 1400.6000 (1997).

<sup>[7]</sup> Minnesota Statutes, section 256B.0627, subdivision 4(b)(1).

<sup>[8]</sup> Minnesota Statutes, section 14.62, subdivision 1.